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A Message From The President

Clarence L. Yancey

I have completed one-half of the year of service to the bar with which I have been honored, and this is in the nature of a report of activities and outline of a program for the future. Since last May, the Board of Governors has had three meetings. We have canvassed the bar with reference to the proposed constitutional convention, and by odds of nearly three to one with a heavy vote, our members registered opposition to the call. We have proposed to the members that the charter be amended so as to create a house of delegates which would be the governing body of the association and which would be more representative of the entire bar. This proposition was overwhelmingly approved, and machinery is now being established to have the first members elected from the several judicial districts.

There has been sent to each member of the association the leaflet, "A Challenge for Louisiana Lawyers", which gives some details on the reasons for the proposed increase in dues which was unanimously approved at the last convention, at which time the Board of Governors was directed to submit the proposition to the members. Fifteen years ago lawyers lead the other professions in income. Today, the income of the average physician is nearly double that of the average attorney. The bar association can and will do something about the earnings of the average lawyer if the bar itself is willing to finance the project. The time which leading lawyers of the State are willing to donate in doing bar work could not be purchased for $100,000. The matter of the dues increase is an extremely worthwhile project and it is my belief that the additional income will spell the difference between really doing something for the lawyers of this state through the expanded program of bar activities as opposed to a continuation of a mere housekeeping operation. Other states have done it and other professions have done it. I sincerely hope that the dues increase will be approved so that a real program of service to the bar can be launched.

The bar association functions in great measure through its committees and sections. The activity of the sections culminates

at the Annual Meeting. The committees work more or less continuously. The committee on legislation spent hours and days considering measures of interest to the organized bar during the regular session of the Louisiana Legislature. The Junior Bar is continuously active with many projects. The Public Relations Committee, though hampered by lack of funds, has numerous projects afoot, one of which is the publication in the larger newspapers of the State of a column on "The Law and You." An award to the newsman of the State (whether in the newspaper, radio or television field), who does the best job during the year on law reporting is being considered.

We are all familiar with the fine work being done by the Louisiana Formulary Committee. The Committee on Legal Aid is constantly active, as are the Committee on Bar Admissions, the Bar Admissions Advisory Committee, the Committee on Continuing Professional Education, and others. It is difficult to single out and call attention to any particular committee because all of the lawyers comprising these committees are conscientious and hard working members of the association. I could not let the opportunity pass, however, without mentioning the fine work of the Committee on Professional Ethics and Grievances. This committee, since 1948, has processed approximately 400 cases which have been submitted to it. Some of these have involved disbarment and the committee members have given much valuable time and faithful attention to that important task. It is actively handling at this time a proceeding in the United States Supreme Court. This committee is greatly hampered for lack of funds, and the situation will be alleviated if the dues increase is approved.

Since last May, representing the association, I have attended the Annual Convention of the Mississippi Bar at Jackson, the Annual Meeting of the Texas Bar Association at Houston, the American Bar Association meeting at Dallas, the Federal Judicial Conference at New Orleans, the Attorney Generals Conference on Congestion in the Courts at Washington, D. C., and the Louisiana Judicial Council and Conference of District Judges at New Orleans. The association is one of the sponsors of the Tulane Tax Institute and the Conference on Military Law at Louisiana State University, both of which were held in November. I had the honor of presiding at one of the sessions of the Tax Institute and delivered an address of welcome at the Military Law Conference.

The Conference of Local Bar Associations will be held at Baton Rouge on January 17, 18 and 19, 1957. Several of the sections and committees will meet at that time. Fred A. Blanche, Sr. is chairman of the arrangements for this meeting. The Annual Convention of the association will be held at Shreveport May 9, 10 and 11, 1957, and formal announcements about it will be sent our in due course.

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A Consideration of Systems of Law School Examinations in the Americas: A Comparative Study*

By Dr. Brendan F. Brown of Loyola University of the South

I

Dissimilarity in the Aims of Legal Education in the Americas Has Been Caused Partly by Difference in the Intrinsic Characteristics of the Roman and English Laws

The aims of legal education are manifestly determined by what will be professionally required of the young lawyer after he has completed his program of preparation and becomes a member of the legal profession. This in turn will be partly decided by the nature of the particular legal order which he will undertake to make effective as a minister of justice. Each legal order rests on a particular body of positive law which has its own characteristic origin and development. This is particularly true of the Roman and English laws. These have a common starting point in the natural law, but each has its own distinctive attributes, which are the result of intrinsic and extrinsic factors. Differences in the respective ends of legal education in Anglo-America and Latin-America have followed from diversity with regard to these attributes.

The English law from which the legal order of Anglo-America arises and the Roman law from which the legal systems of Latin-America stem have a common origin in so far as they are implementations of an objective natural law. This accounts for the similarities of moral ideal and the intellectual methods used for its attainment in the two bodies of law. According to this moral ideal, the primary purpose of positive law is the promotion of justice based on the equality and the sacredness of human personality.

*This is in substance the official paper of the Louisiana State Bar Association delivered on April 17, 1956 at the Ninth Conference of the Inter-American Bar Association, Dallas, Texas.

The general intellectual methods required for the administration of justice under both laws are similar since law is a rational and social science intended for the common good. These methods require training on the part of future lawyers which will produce the so-called "legal mind." Such training must develop the power of deduction and induction, as well as the capacity of analysis and synthesis. Regardless of the legal system in question, the "legal mind" is characterized by its superior ability to identify relevance and to apply principles to facts, primarily the type of facts found in litigation, and secondly, social facts.

But the intrinsic characteristics of a legal system will control the precise emphasis which must be placed upon the various skills and capacities by the members of the respective legal professions. Some variation in the purposes of legal education, in Anglo-America and Latin-America, will always be inevitable, therefore, because of the differences in the intrinsic attributes of the Roman and English laws. These are the result of dissimilarity of historical source and underlying legal philosophy. They also stemmed from divergent concepts of the proper relationship between the legal and political orders.

The source of the Roman law, as of the time it became the father of the modern civil law, was principally in the legislative and executive branches of the government. This source necessitated codification. Structurally, the Roman law and its derivatives assumed the form of a series of highly generalized codal provisions because of this source. These became the inescapable starting point of practically all legal thinking. Hence proficiency in such thinking was measured in terms of deduction rather than induction, generally speaking. Principles became far more important than facts. The jurist who was able to shed light on the meaning and application of these principles was more influential than the judge.

The converse is true with regard to the Common law. In the area of private law, it was chiefly built by judges through the process of explicit induction from facts and implicitly by deduction from moral principles in cases of first impression. The statute became subordinate to the interpreting authority of the judiciary.

The predominant doctrine in the Civilian legal systems, like their Roman law model, is that the sovereign makes and should

make the positive law by an extrinsic act of legislation. Law-making is the prerogative of political sovereignty. But the theory of the Common law is that law for the most part is discovered by the judge, who causes the body of the positive law to grow gradually by intrinsically integrating it with moral, or at least normative, principles.

Civilian legal systems tend to magnify the authority of the political sovereign. Professedly this sovereign in making positive law should be under the inhibitions of an objective natural law. But with the lessening of the influence of this type of legal philosophy, after the sixteenth century, the political order assumed a superior position in relation to the positive law. But the philosophy of the Common law was that the sovereign ruled under God and the law. The Common law at times was identified with the natural law itself because of the close connection between that law and judge-made law. The natural law was a greater influence, therefore, in the formation of the Common law than the Civil law.

II

Extrinsic Factors Have Moulded the Aims of Legal Education in the Americas

Environmental differences with regard to Roman and English law have established precise values and emphases in the matter of what is required for an adequate legal education. The Civilian tradition of education began with the rediscovery and reception of the Justinian *Corpus Juris Civilis*, beginning in the twelfth century, approximately. This tradition was rooted in the newly arising universities of Bologna, Paris and Oxford. The study of law was not an isolated experience, but was undertaken in a university environment which witnessed the education and preparation of students for the other great professions, such as theology, philosophy, and medicine. Necessarily the study of law was correlated with that of the other rational sciences, particularly philosophy.

In the Roman law world, legal science was advanced not only by the lawyers, but also by the philosophical jurist-theologians. The former, such as the Glossators and Commentators, followed the analytical technique. The latter, namely the Schoolmen, such

as St. Thomas Aquinas, adhered to the method of the scholastic natural law.

Latin-American legal education conformed to its Roman law prototype. Its aims were dictated primarily by the law professor or jurist. He determined the direction of legal education in Civilian countries because he was more powerful than the judge. He influenced legislation which was more important than court-decisions. Obviously he wielded far more authority than the legal practitioner. The latter merely exerted pressure on the judge in the making of case-law.

The jurist believed in integrating the analytical method with the philosophical, and studying law doctrinally, as an organic and scientific system, from the historical and critical points of view. This is so because he was the product of the university. For him skill in the litigation of cases was not as essential for the law graduate as the capacity for directing the legal order to the realization of specific purposes.

But education in the Common law began in the Inns of Court in London without benefit of a university environment. It was not until Sir William Blackstone delivered his classical Vinerian lectures at All Souls College, Oxford, in the middle of the eighteenth century, that English legal education was given a university-orientation. But even after this, lawyers, (i.e.) legal practitioners, as distinguished from professors interested in teaching the morality and sociality of law, maintained control of English legal education. They exphasized the application of the analytical method to positive law which was primarily regarded as an end in itself. After Blackston, the great influence of Analytical Jurisprudence in the English universities, inspired by Hobbes in the seventeenth Century, and formulated by Austin in the nineteenth, fostered still further a type of legal education which detached positive law from the study of the surrounding rational and social sciences.

Anglo-American legal education followed, until rather recently, the English pattern. For the most part, it adopted the limited aims which the legal practitioner had established. General preparation for legal practice was considered an adequate training for all law students. The theory was that this training, coupled with experience in practice, would fit the graduate for a judicial career. Such training was also considered sufficient

for the successful performance of duties required by all other branches of the legal profession, such as law-teaching, counselling, and legislative law-making.

III

. *The Systems of Law School Examinations in the Americas Are Means Toward the Achievement of the Aims of Particular Types of Legal Education*

Several significant differences appear between the system of law school examinations which exists in Anglo-America and that which prevails in Latin-America. These are the result of the historical and philosophical variations which exist between the Roman and English laws, and hence between the aims of Roman and English legal education. The professional role which the student is expected to assume in examination under the two systems is different. The relation of the authority of the state toward the examinations is dissimilar.

In the first place, according to the prevailing type of essay question, which is used in law schools in the United States, the student is expected to assume the role of a judge. He is asked to recognize the legal problems implicit in a number of sets of facts covering each course. He must solve these problems by relating the facts to the principles. Inductive ability is stressed. But under the Latin-American system, the student is regarded as a jurist or law professor. He is asked to show his comprehension of the legal system in question and its parts. Deductive reasoning is chiefly required.

Secondly, law schools in the United States do not regard the candidate for the professional degree in law as a graduate student in the university in question. But apparently he is so considered in the South American examination which he must pass to qualify for the Licentiate in Juridical and Social Sciences. This is evidenced by the requirement that he is obliged to take comprehensive oral examinations and submit a thesis upon which he will be examined. The differences of the two systems in this respect disappear with regard to the Anglo-American graduate degrees of LL.M. and S.J.D. These are university, rather than professional, degrees. The South American Licentiate is a professional degree insofar as it entitles the holder to take the Bar

examination. It enables the holder to qualify for practice as a Notary Public.

Thirdly, the state may participate actively in the authorization of law school examinations in Latin-America, but not in Anglo-America. Thus, in Honduras, the faculty proposes a list of lawyers and law professors to the President of the University, who in turn forwards it to the Minister of Public Education. The Minister prepares the examination tribunal for each of the subject matters for this list. The Government issues a resolution and communicates it to the Rector or President for the faculty. In turn, the faculty notifies the individual members of the examination tribunal.

After the student has passed all of his ordinary or extraordinary examinations, he has a year in which to submit to a private examination. This takes place before a tribunal which has been selected by the Dean of the Faculty. It lasts three hours. If he passes, the student selects the subject of his thesis. He has a year in which to prepare it. After he has made copies of the thesis, he submits them to a new tribunal. This may be the same as that which conducted the private examination. After the thesis has been approved, he files an applicaion in a Sealed Stamped Official Paper. This paper is the same as that which is used for all other official applications to the Government. He requests a public examination. After the thesis has been read, the tribunal asks the student questions. The minutes of the examination are read and signed by all present. Finally the *Licenciado en Derecho (Licenciado en Ciencias Juridicas y Sociales)* may apply to the Supreme Court to take the Bar Examination.[1]

Under both systems, the professional responsibility rests upon the Dean and the members of the faculty. In both systems, they formulate the questions, and determine by regulations promulgated beforehand which students may profitably take the examinations in view of their attendance and daily work. In both systems, they arrange a grading system and determine whether the student has passed.

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1. I am indebted for the above information to Dr. Jorge Fidel Durón, former President of the University of Honduras, for a six year term, which ended in 1955.

IV

An Analysis of the Law School Examinations in Louisiana Will Demonstrate How the Concept of the Role of the Judge Determines the Choice of Technique

The Comman law and the Civil law have competed for supremacy in Louisiana. The Commissioners appointed in 1806 by the Legislature of the New territory of Orleans, the predecessor of the State of Louisiana, to draw up a Code had the benefit of the Code Napoleon, enacted two years previously. This Code was adopted and adapted to the experience of a century of American Colonial life.

But eventually the judicial process in Louisiana began to show a preference for the Anglo-American approach. This process began to be used as a source of positive law, as distinguished from legislation. It was strengthened by the introduction in practice of the principle of *stare decisis*, particularly in matters which were not covered by the Code. That process felt free to interpret the Code in the light of the changing *mores* and social habits, and thus to treat it as a statute. These changes resulted ultimately from the traditional English technique of beginning with induction and working from facts to principles, in contrast to the Roman method of proceeding primarily from principles to facts.

The change which took place in the methods of administering the law of Louisiana has affected the character of the law school examination in that state with respect to the Code courses. Thus in the Law School of Loyola University of the South, examinations are given on both the Civil law of Louisiana and the Anglo-American Common law. Such Civil law courses as Donations and Community Property, Obligations, Persons, Property, Sales and Leases, Security Rights, and Successions are offered. These courses are based on specific Articles of the Louisiana Civil Code. But an analysis of the examination questions given on these courses will show that the same technique is followed as in the instance of questions covering the Common law courses. The students are expected, generally speaking, to adjudicate issues arising out of a number of sets of typical facts. They are simulated judges, approaching the Articles of the Louisiana Civil Code after the manner of the judiciary.

But whether the Common or Civil law technique is followed, the student's knowledge of the basic concepts of a Code Course will be tested. This conclusion, plus the fact that the Louisiana Code courses are similar in content to those in Roman law countries, led to the adoption of that standard of the Association of American Law Schools which deals with the matter of advanced standing for foreign students. This standard, namely, *Articles of Association, Appendix B, Article* VIII-13, *provides that:*

> "A member school may grant advanced standing toward the first degree in law for work in a law school outside the continental limits of the United States only to the extent of work successfully completed, and not in excess of:
>
> a. Two years if the curriculum was based primarily on Anglo-American common law *or on a system of law basically followed in the jurisdiction in which the member school is located;* (emphasis added).
>
> b. Otherwise, not in excess of one year."

This provision may be interpreted so as to authorize Louisiana Law Schools to grant as much as two years of advanced standing to students from law schools from Latin-America because they have studied a system of law basically followed in Louisiana. At the time of the adoption of this provision, a division of opinion existed. The minority point of view was that the similarities of basic legal content between the Louisiana Civil Code and the Latin-American Codes were outweighed by the differences in approach. The minority believed that even though the civilian method of legal education was attempted with reference to the Louisiana Code courses, it would not succeed because of a lack of juristic commentaries, such as exist in the Latin-American countries. But the majority view, which was accepted by the Association of American Law Schools, regarded matter as more important than form.

V

CONCLUSION

A consideration of the systems of law school examinations in the Americas shows that certain fundamental differences exist. These differences are the effect of divergent educational aims, which are the result of historical, philosophical and environmental variations in the origin and growth of the Roman and English Legal systems, respectively, from which the two bodies

of law in the Americas are derived. The judge is the principal law-maker in the Common law, and the legislator and his juridical advisers in the Civil law. Induction and facts are the starting points in the examinations in Anglo-America, and deduction and principles in Latin-America. The examinations in Anglo-America for the professional degree in law, generally speaking, regard positive law as an end in itself, while in Latin-American law school examinations, law is regarded as a means toward moral and social ends.

It is desirable to overcome these differences as far as possible, so that the future leaders of the Bar in the Americas will have a common juridical outlook, which will eventually make possible the partial fusion of the legal systems of Anglo-America and Latin-America. These differences should be made known to all members of the legal profession of North and South America, especially the law teachers. Those who teach law in Anglo-America ought to be encouraged to supplement the present prevailing type of examination, which tests the judgment of students in regard to the solution of legal problems growing out of fact-situations, by historical and philosophical questions. Law teachers in Latin-America should be encouraged to supplement their present prevailing type of examination by requiring the student to demonstrate a creative judicial capacity.

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Implications of the Segregation Decision

By Jared Y. Sanders, Jr.

Since the segregation decision by the United States Supreme Court has been rendered, quite a few have recalled the cynical remark attributed to Justice Hughes that "the Constitution is what the Supreme Court says it is." It has also been suggested by certain eminent authorities that it is absurd to even suggest that the Supreme Court can do anything that is "unconstitutional."

However, a moment's reflection without emotion on this point should satisfy one that the Constitution is what it is. No statement by the Supreme Court or by any other group of men can make it anything but what it is.

Has the Supreme Court the right to *change* the Constitution by interpretation?

Has the Supreme Court the right to rule by edict where it considers the Congress in error in failing to legislate?

Have we exchanged the "divine right of kings" for "divine right of the Supreme Court"?

Have we substituted for the government of checks and balances instituted by the Founding Fathers a supreme omnipotent and infallible Supreme Court as the final arbiter of our destinies?

These are not idle questions. They are very profound questions.

When the kings of the Middle Ages began to assume an autocratic power that the elected chieftains of their ancestors had not claimed, it finally became necessary for their so-called subjects to acquiesce in this arbitrary use of power or to resist it. The terrible revolutions that convulsed Europe at the end of the Middle Ages culminating in the beheading of Charles I of England and the overthrow of the Bourbons in the French Revolution ended in Europe the theory of the divine right of kings to rule by edict.

Whither are we drifting in the United States?

If the Supreme Court should by decree declare that the republic set up by the Founding Fathers was outmoded and that the time had come to have a king and annoint former Governor, now Chief Justice, Earl Warren, President Dwight Eisenhower or some other man of their choosing to be the King of the United States, would this act be constitutional because the Supreme Court did it?

The question answers itself.

Yet, if it is admitted that such an act, which while remote nevertheless is a possibility, would not be constitutional, then it follows necessarily that some acts that the Supreme Court could do would not be constitutional. If this is conceded, why then the question follows as to where is the line to be drawn? This necessarily admits the possibility of debate and discussion and of questioning the right of the Supreme Court to do certain things on the ground that it is unconstitutional.

The arbitrary manner in which the Supreme Court, in the Brown (segregation) decision, reinterpreted the Constitution in accordance with its own opinions of what the law should be, completely setting aside the reservation of power to the Congress to legislate; claiming for itself the right to legislate when Congress failed to do so; claiming for itself the right to rewrite the Constitution on the grounds it was outmoded and that modern conditions made it necessary for the Supreme Court to do so, ignoring and overruling in effect the 10th Amendment, completely ignores the constitutional method of amending the Constitution set up in the Constitution itself.

This usurpation of power by the Supreme Court in its pretended right to amend the Constitution by interpretation in accordance with the personal views of nine men or with a majority of nine men appointed for life and themselves not subject to any form of check or restraint constitutes a most radical change in our whole form and substance of government.

If the Supreme Court can rewrite the Constitution to suit its views on social questions what is to prevent it from rewriting the Constitution and imposing upon the country some other economic system different from the one which we now enjoy?

There is herewith presented a fictitious decision of the United States Supreme Court in the year 1996 involving the question

of free enterprise. The wording and reasoning are practically identical with the wording and reasoning of the segregation decision. Is the segregation decision the forerunner of something like this hypothetical case herewith presented? There is reproduced below the Brown v. Board of Education of Topeka segregation decision (347 US 483, 98 L ed 873, 74 S Ct 686, 38 ALR 2d 1180) in the lefthand column and a hypothetical case attributed to the year 1996 A.D. in the righthand column:

Brown v. Board of Education of Topeka, (347 US 483, 98 L ed 873, 74 S Ct, 686, 38 ALR 2d 1180):

"Mr. Chief Justice Warren delivered the opinion of the Court.

"These cases come to us from the States of Kansas, South Carolina, Virginia and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

"In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the

Paul Marques, et als. v. Bon H. Richard, (A.D. 1996), *John Doe v. Richard Roe,* etc., etc.

Mr. Chief Justice ..... delivered the opinion of the Court.

These cases come to us from the States of New York, Pennsylvania, New Jersey, Illinois, Michigan, Ohio, Indiana and California. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

In each of these cases, the plaintiff, each in his own behalf and on behalf of others similarly situated, seeks admission to and use of certain property of defendants. Plaintiffs allege in substance that they have each of them been denied admission to and use of certain property "owned" by defendants under state law or custom requiring or permitting private ownership of property. This "ownership" of private property was alleged to deprive the plaintiffs of equal protection of the laws under the Four-

Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called 'separate but equal' doctrine announced by this Court in Plessy v. Ferguson, 163 US 537, 41 L ed 256, 16 S Ct 1138. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

"The plaintiffs contend that segregated public schools are not 'equal' and cannot be made 'equal,' and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

teenth Amendment. In each case a three-judge federal district court denied relief to the plaintiffs on the so-called "private ownership of property" doctrine previously announced and upheld by this Court in numerous cases. Under that doctrine private ownership of property is upheld under the so-called "free enterprise" or "capitalistic" system.

Plaintiffs contend that under the private ownership of property doctrine certain favored people are protected by law in the use and so-called "ownership" of property, that this "right of ownership" may be and frequently is inherited so that these favored individuals can and frequently do come into the ownership of great wealth without any exertion on their part other than the accident of birth, and without any contribution to society, that those who are born of poor parents inherit nothing and under the operation of the "private ownership" theory are thereby deprived of equal rights in and to the "private property" so owned and are in fact denied

equality of treatment under the law in that they are denied even any opportunity of acquiring equal use and ownership of the property so "owned" and inherited, and that under this theory property is not owned equally and that ownership of property cannot be made "equal" under the so-called free enterprise system and that hence plaintiffs are deprived of equal protection of the law. Because of the obvious importance of the question presented, the Court has taken jurisdiction. Argument was heard in the 1995 term and reargument was heard this term on certain questions propounded by the Court.

"Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us, that although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all le-

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in regard to the ownership of property, the profit motive, and the free enterprise system, and the views of proponents and opponents of the amendment. This discussion and our own investigation convince us that although the sources cast some light it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the

gal distinctions among 'all persons born or naturalized in the United States.' Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

"An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public education had already advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the con-

post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents just as certainly were antagonistic to both the letter and the spirit of the amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to the capitalistic system, free enterprise and the profit motive, is the status of our economic system at that time as well as at the time of the adoption of the Federal Constitution. At the time of the adoption of the Federal Constitution this nation was largely rural and agricultural. Equality of treatment under the law with regard to the ownership of property, especially real property, was not presented because of the fact that anyone who desired ownership of land could find vast areas of land in the then uninhabited, except for savages, areas to the west. The thirteen colonies comprised a narrow strip along the Atlantic seaboard and except for some settlements of the French and Spanish in various other parts of the continent

gressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

"In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. The doctrine of 'separate but equal' did not make its appearance in this Court until 1896 in the case of Plessy v. Ferguson (US) supra, involving not education but transportation. American courts have since labored with the doctrine

vast areas of the continent were awaiting population. This great abundance of property, especially real property, created equality of opportunity under the law and hence the question of private ownership of property was never presented to the framers of the Constitution. This same condition continued to obtain with some modification at the time of the adoption of the Fourteenth Amendment. While certain areas of the North had become industrialized, the South was largely agricultural and the West was mainly unpopulated and awaiting development. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on the free enterprise system, the profit motive and the capitalistic system as a whole.

In the relatively few cases that have been presented to this Court in which the question of equality of opportunity under the law has been presented, relief has been possible owing to the fact that there were still public domains awaiting to be homesteaded, that there were large areas of this country undeveloped and it was possible to find relief for those seeking redress at the hands of the Court by a method short of the reinterpretation of

for over half a century. In this Court, there have been six cases involving the 'separate but equal' doctrine in the field of public education. In Cumming v. County Board of Education, 175 US 528, 44 L ed 262, 20 S Ct 197, and Gong Lum v. Rice, 275 US 78, 72 L ed 172, 48 S Ct 91, the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. Missouri ex rel. Gaines v. Canada, 305 US 337, 83 L ed 208, 59 S Ct 232; Sipuel v. University of Oklahoma, 332 US 631, 92 L ed 247, 68 S Ct 299; Sweatt v. Painter, 339 US 629, 94 L ed 1114, 70 S Ct 848; McLaurin v. Oklahoma State Regents, 339 US 637, 94 L ed 1149, 70 S Ct 851. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in Sweatt v. Painter (US) supra, the Court expressly reserved decision on the question whether Plessy v. Ferguson should be held inapplicable to public education.

"In the instant cases, that question is directly presented. Here, unlike Sweatt v. Painter, there are findings below that the Negro and white schools in-

the Constitution. In the case of Perspire v. Pliaster, US 106 S Ct 2d 601, (1982), the Court expressly reserved decision on the question of whether various other cases cited in the opinion should be held inapplicable to the question of the free enterprise system and the private ownership of property.

In the instant cases, that question is directly presented. Here, unlike Perspire v. Pliaster, there are findings below that go to the effect that there

volved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other 'tangible' factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

"In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its

are no public lands awaiting to be homesteaded, that the entire arable portions of our land have been populated as densely as circumstances will permit and there is evidence to the effect that it is extremely unlikely that defendants or their descendants will ever be inclined to part with their holdings on terms that plaintiffs could meet or that plaintiffs on their part would ever be in a position to acquire property either real estate or personal that would enable them to live in the same conditions and upon the same terms and enjoyments as plaintiff. Our decision, therefore, cannot turn merely on the question of whether or not the plaintiffs by their own efforts and ingenuity can possess themselves of arable land or by their own efforts can come into possession of enough wealth to support themselves in comfort. We must look instead on the effect of the capitalistic system and of free enterprise as a whole and determine what effect the private ownership of property has itself upon the public mind.

In approaching this problem, we cannot turn the clock back to 1868 when the amendment was adopted. Nor can we turn it back to the conditions obtaining at the time the Federal Constitution was adopted. We must consider the free enter-

present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in the awakening of the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

"We come then to the question presented: Does segrega-

prise system, the profit motive and the capitalistic system as a whole in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined whether the free enterprise system of itself deprives these plaintiffs of equal protection of the laws.

Today, the free enterprise system is probably the greatest influence in perpetuating classes in our society, in keeping the rich man rich and the poor man poor. In these days of a highly industrialized society the arable land of our country already taken up with no public domain awaiting to be homesteaded and with those already in control of tremendous resources firmly entrenched in their control thereof by the so-called law of private ownership, it is extremely doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of equal economic development with his fellows. Such an opportunity is a right which must be made available to all on equal terms.

We come to the question then presented: Does the free enter-

tion of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

"In Sweatt v. Painter (US) supra, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on 'those qualities which are incapable of objective measurement but which make for greatness in a law school.' In McLaurin v. Oklahoma State Regents, 339 US 637, 94 L ed 1149, 70 S Ct 851, supra, the Court, in requiring that a Negro admitted to a white graduate school be treated like other students, again resorted to intangible considerations: '. . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.' Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

prise system, the profit motive and the capitalistic system as a whole deprive the members of the poorer group of equal economic opportunities? We believe that it does.

To separate people into classes on account of differences in economic opportunity, to separate the children of the rich from the children of the poor in their homes and in their general economic standards solely because of their wealth or lack of wealth generates a feeling of inferiority as to the status of the poorer in the community. This may affect the hearts and minds of these people both children and adults alike in a way unlikely ever to be undone. The effect of this separation on the economic, political and social development of our citizenry was well stated by the finding in the California case by a court which nevertheless felt compelled to rule against the plaintiff.

The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

" 'Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.'

The theory of private ownership of property in our country has a detrimental effect upon those who do not own property. The impact is all the greater in that it has the sanction of the law. The policy of separating the classes on account of their wealth or lack of wealth is usually interpreted as indicating an inferiority of the poorer group. This sense of inferiority affects the character of the adult and seriously affects the motivation of the children of the poor. The fact that one class of people live in fine houses while another class of people are compelled by the operation of this so-called law (private ownership) to live in tenements or even "slums" has a tendency to retard the political, social and economic as well as the mental development of the poorer class of children and creates a sense of inferiority and class frustration upon the poorer classes who feel that they are deprived of an inherent right by the operation of this so-called artificial law.

"Whatever may have been the extent of psychological

Whatever may have been the extent of economic knowledge

knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. Any language in Plessy v. Ferguson contrary to this finding is rejected.

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we h o l d that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the F o u r t e e n t h Amendment.

at the time of the adoption of the Fourteenth Amendment or even at the time of the adoption of the Federal Constitution, this finding is amply supported by modern authority.[1] Any language in Perspire v. Pliaster or other cases cited to the contrary to this finding is rejected.

We conclude that in the field of economics the doctrine of private ownership of property has no place. Separate and private ownership of property is inherently unequal. Therefore, we rule that the plaintiffs and all similarly situated for whom the actions have been brought are by reason of the so-called law of private ownership complained of, deprived of equal protection of the law as guaranteed by the F o u r t e e n t h Amendment. This disposition makes unnecessary any discussion whether such deprivation of equal rights under the private ownership theory also violates the due process clause of t h e Fourteenth Amendment. Defendants raise the point that Section 4 of the Fourteenth Amendment stipulates t h a t "the congress shall have power to e n f o r c e, by appropriate legislation, the provisions of

1. On the detrimental effects of private ownership of property in the capitalistic system see "Das Capital" by Karl Marx, The Proletarian Revolution by Lenin, The Philosophy of Communism by Stalin. On the inequalities of the United States Constitution, its unworkability, and its nearly being a fraud on the common people, see generally Myrdal, An American Dilemma, cited in Brown v. Board of Education of Topeka, supra.

this article," and that this means that only Congress has that power. This argument was disposed of summarily by the Court in Brown v. Board of Education of Topeka, 347 US 483, 98 L ed 873, 74 S Ct 686, 37 ALR 2d 1180. It is sufficient to say that in any case where the Congress fails to act this Court will, if it deems it wise to do so, issue the necessary edict.

"Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases present problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question — the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. The Attorney General of the United States is again invited to participate. The Attorneys General of the states re-

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases present problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question — the constitutionality of private ownership of property. We have now announced that such private ownership of property is a denial of equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further arguments on these questions for reargument at this time. The Attorney General of the United States is again invited to participate. The Attorneys General of the

quiring or permitting segregation in public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.

It is so ordered."

several states requiring or permitting private ownership of property will also be permitted to appear as amici curiae upon request to do so by September 15, 1997, and submission of briefs by October 1, 1997.

It is so ordered.

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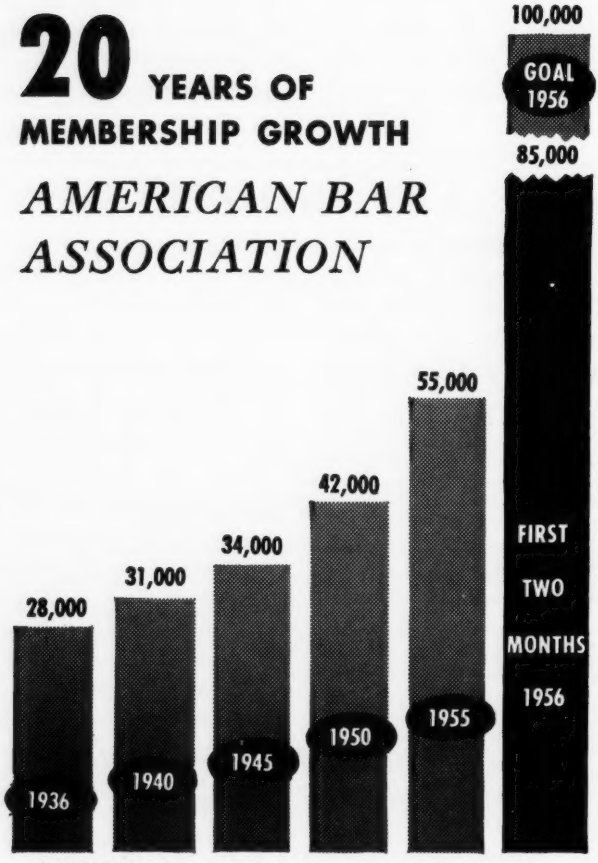

CHICAGO—Membership of the American Bar Association has tripled since 1936, the year formation of the House of Delegates made the ABA a truly representative national organization of the bar. The most spectacular growth in the 78-year history of the Association has occurred during the first two months of 1956 due to the nation-wide membership development campaign. Goal of the current campaign is a membership of 100,000 by August.

Public Opinion of the Legal Profession And the Work of the Judicial Council

By Ray Forrester
Dean, Tulane University Law School

There is increasing concern at the present time among members of the legal profession regarding the reputation of the profession with the general public. Surveys which have been made recently have indicated that the layman's view of the profession leaves much to be desired. There is a popular impression which we hear repeatedly that "in the good old days the profession stood high in general esteem." Upon investigation, however, one finds that the truth is that the "old days" were not so good at all. In fact, historically the legal profession has suffered in public opinion and the problem has been an ancient one nearly endemic to the calling.

Looking at the matter historically, the profession has actually gained in public approval. For example, as early as 1275 the English enacted legislation strictly regulating lawyers, and through most of the centuries since that time the layman of England from king to commoner has taken a rather dim view of our professional predecessors. King Henry IV in 1404 actually prohibited the election of lawyers to Parliament and in 1450 Jack Cade began the rebellion bearing his name with a public proclamation which contained among his list of complaints that "the law serveth as naught else in these days but for to do wrong, for nothing is sped but false matter by colour of the law." Of course, we are all familiar with Shakespeare's famous lines reflecting his own and the popular attitude of his day.

During colonial days in America one would expect that the situation would have improved, but despite the great interest in individual freedom and the historical role of the lawyer in that regard, the position of the profession during that period in American history was very poor. James Truslow Adams describes the situation at that time as follows:

"Not only were they (lawyers), as such, of not the slightest importance, but on the contrary to be a lawyer was to incur

social opprobrium. In 1698 in Connecticut lawyers were included in discriminatory legislation in company with drunkards and keepers of brothels. In 1730, in Rhode Island, a law was enacted following the example of King Henry IV excluding them from membership in the legislature. In that same year, the number allowed to practice in the courts of New York was limited to eight, although there were thirty in the city, many of extremely bad reputation."

Charles Warren in his history of the Harvard Law School states that the unpopularity of lawyers as a class was one of the facts which stood out prominently in the history of the American colonial period. Warren said:

"In all the Colonies he was a character of disrepute. In many of them, persons acting as attorneys were forbidden to receive any fee; in some, all paid attorneys were barred from the courts; in all they were subjected to the most rigid restrictions as to fees and procedure. Even in England, the lawyer's reputation may be estimated to a certain extent by the titles of frequent tracts which were printed in London, like *The Downfall of Unjust Lawyers, Doomsday Drawing Near with Thunder and Lightning for Lawyers* (1645); *A Rod for Lawyers Who Are Hereby Declared Robbers and Deceivers of the Nation: Essay Wherein Is Described the Lawyers, Smugglers and Officers Frauds* (1675). And in the minds of many Englishmen the lawyer was synonymous with the cringing Attorney Generals and Solicitor Generals of the Crown and the arbitrary Justices of the King's Court, all bent on conviction of those who opposed the King's prerogative, and twisting the law to secure convictions."

I mention these facts to give us some perspective concerning our profession and the problem involved and to remind us that traditionally we have had a hard time making our way as men of good and effective purpose.

As a recent writer has said,

"It would be refreshing indeed if the recent surveys indicated that we had solved this ancient problem of adverse public opinion. Unhappily, this is not the case. It is not that the majority of people condemn the profession, it is simply that the minority which does so is substantial and the general attitude decidely lukewarm." The concern of the profession with

the problem is entirely justified and deserves the conscientious attention of all of us. This attention, however, should not be directed primarily at the superficial side of the problem, but should be directed to the substance of the ills which bring about this negative public attitude. We cannot hope to solve the problem with a few radio and TV broadcasts, newspaper stories, or talks to student bodies and civic groups. In other words, it is not simply a matter of explanation, although that helps. The real solution must come however — and it will take time to bring it about — in action and in faithful and conscientious performance of the hard tasks of the law.

In these surveys of the lay point of view toward the profession, the primary complaints have been based on, first of all, delay and procrastination by the lawyers and the courts. Perhaps it is no accident that in Australia the name given to a bramble bush which is notorious for impeding a foot traveler is "lawyer"! Second, the expense connected with legal service, particularly in litigation. Third, the needless complexities and technicalities of the law, particularly the adjective law, and, lastly, the uncertainties of the law, that is, the inability of able lawyers to predict with sufficient consistency the results of litigation. These are the substantive evils of the law which must be corrected before public opinion may be expected to improve.

I am sure that you fully realize the relevance in this regard of the Judicial Council. Judicial councils are of recent origin. They were inaugurated initially in Oregon and Ohio in 1923 and in Massachusetts and Maryland in 1924. Since that time many states have adopted the device and there is now a National Conference of Judicial Councils. The objectives of judicial councils have been directed first and foremost to the elimination of the very defects in the administration of justice which, as I have indicated, constitute the basis of public disapproval. More specifically, they have been learning what is really going on in our courts and, where action is needed, deciding what methods should be used and where they should be directed.

The Louisiana Judicial Council was organized by rule of court in 1950. According to the Louisiana Bar Journal, the major credit must be given to Chief Justice Fournet, Richard B. Montgomery, Jr., and Judge J. Cleveland Fruge. In the short span of its active life, the Council has served effectively in accomplishing its objectives. One of its primary accomplish-

ments (through the capable work of George Pugh, its first Judicial Administrator) has been the collection of accurate and meaningful statistics regarding the judicial business of the State. It has identified the areas of difficulty. It has led to a recognition that some members of the judiciary have been in great need of assistance and it has made it possible to obtain aid for them so that dockets might be cleared.

Also, the Council has constituted a most helpful consultative and discussion group in which the members of the judiciary through joint meetings with the district judges and others have been able to consider their common problems and to obtain information regarding the accomplishments of other states in similar areas. The liaison among all the courts and judges of Louisiana thus established has proven of immeasurable benefit. As the Chief Justice has stated in connection with the annual report of the Judicial Counel for 1955, "The work of our courts is big business and yet for many years we have lacked the type of statistical information which makes the efficiency of big business possible."

Louisiana is in a fortunate position in relation to the complaints of the public regarding the defects of the administration of justice. For one thing, the State, by virtue of the small number of civil jury cases which are tried under its legal system, is not faced with the excessive backlog of cases on crowded dockets, which are to be found in common law states mainly on the jury side. In some states, these cases are years behind, as much as fifty months in one area of New York, for example. The procedures in Louisiana, particularly in relation to evidence and appellate review, are, in general, more simple, less time-consuming and less expensive than those in other states. Thus, the Judicial Council of the Supreme Court of Louisiana began its work with a less critical situation than that which faced similar organizations in other states. It is, therefore, in a measure not a corrective device but, as the Chief Justice has said on more than one occasion, it is primarily a preventive device.

However, in view of the great increase in Louisiana in population, business activity and wealth, this preventive measure is most appropriate and most timely and I have no doubt that the Judicial Council working in partnership with the State government, the Bar Association, the Louisiana State Law Institute and the law schools may do much to maintain and strengthen

the efficient, speedy, inexpensive and characterful administration of justice in Louisiana in the future. That is the road to public approval for our profession and I know of no agency in this State at the present time which offers more hope in that direction than the Judicial Council.

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Reproduction of Contents of Letter dated September 10, 1956, from Cuthbert S. Baldwin, Louisiana Delegate to American Bar Association

Previous to the recent convention of the American Bar Association in Dallas a movement was on foot to create a new section to be known as the "Section of Negligence and Workmen's Compensation Law" of the American Bar Association. I received letters from many lawyers in Louisiana, some of whom urged me to vote for the creation of the section and others of whom requested that I vote against its creation, the latter on the basis that the existing "Section of Insurance Law" was adequate and enabled those lawyers who were seeking the creation of the proposed section to fully express their opinions and ideas within its framework and that, accordingly, no useful purpose would be served by the creation of a separate section.

In view of the great interest that was manifested in the subject matter, I would like to state that the action taken on the proposal at the recent convention was to refer the matter back to the Board of Governors of the American Bar Association for further consideration.

The "Section of Insurance Law" contemplates changing its name to the "Section of Insurance, Negligence and Compensation Law," or some similar name, and to broaden the base of the section so as to give those who are interested in negligence cases only adequate representation therein. The Board of Governors had previously approved the creation of this proposed new section, but in view of the great interest that was manifested by those who desired and those who opposed its creation, it was felt that the matter should be referred back to it for its further consideration and report, and this was the action taken by the House of Delegates.

The matter will come up again at the mid-year meeting of the House of Delegates in Chicago next February.

Would you be kind enough to publish this letter in the next issue of the Journal so that the lawyers of Louisiana and the many friends of mine who have written me may be acquainted with the situation.

Chart of Taxation of Non-Resident Estates

The full value of real and tangible personal property solely owned by a non-resident decedent within its borders is taxed by all the States, the District of Columbia and the territories of Alaska and Hawaii, except that New Hampshire does not tax real property passing to a surviving spouse, lineal descendent or parent.

REAL and TANGIBLE PERSONAL PROPERTY OWNED BY A NON-RESIDENT DECEDENT AND ANOTHER AS TENANTS BY THE ENTIRETY OR AS JOINT TENANTS.

	No.		No.
Alabama	2	Nevada	10
Arizona	1	New Hampshire	15
Arkansas	2	New Jersey	12
California	2	New Mexico	2
Colorado	3	New York	2
Connecticut	3	North Carolina	13
Delaware	2	North Dakota	3
District of Columbia	3 & 4	Ohio	2
Florida	2	Oklahoma	2
Georgia	2	Oregon	19
Idaho	5	Pennsylvania	9
Illinois	3	Rhode Island	2
Indiana	6	South Carolina	15
Iowa	2	South Dakota	16
Kansas	7	Tennessee	1
Kentucky	3	Texas	18
Louisiana	8	Utah	2 & 17
Maine	2	Vermont	14
Maryland	9	Virginia	2
Massachusetts	2	Washington	2
Michigan	10	West Virginia	2
Minnesota	2	Wisconsin	3
Mississippi	1	Wyoming	14
Missouri	11	Alaska	1
Montana	3	Hawaii	1
Nebraska	2		

1. Full value taxed.

2. Full value taxed except to the extent that the survivor can establish that he contributed to the consideration for the acquisition of the property.

3. Taxed proportionately according to the number of owners.

4. "Movables" such as automobiles and boats are not taxed; "Non-movables" such as cash, jewelry and furniture are taxed.

5. Tenancies by the entirety are not recognized; Community property passing to the surviving spouse is not taxable; Joint tenancies are not taxed if the surviving joint owner or owners can prove that such property originally belonged to him or them and have never belonged to decedent, otherwise taxed proportionately according to number of owners.

6. Real property owned by the entireties is not taxed unless title was changed from the decedent to title by the entireties in contemplation of death or if one of the tenants by the entirety devised the real property by will and the surviving tenant does not elect to take by law; Joint tenancies are taxed in full against the surviving joint owners except to the extent that they can establish that the property originally belonged to him or them and had never belonged to the decedent.

7. Tenancies by the entirety are not recognized. Joint tenancies in full if the decedent died on or after July 1, 1955, or if the property was placed in joint tenancy within one year prior to death.

8. Tenancies by the entirety and joint tenancies are not recognized.

9. Tenancies by the entirety are not taxed; Joint tenancies are taxed proportionately according to the number of owners.

10. Not Taxed.

11. Not taxed, unless created within two years prior to death.

12. Tenancies by the entirety are not taxed; Joint tenancies are not recognized, but property held in more than one name is taxed in full except to the extent that the survivor can es-

tablish he contributed to the consideration for the acquisition of the property.

13. Tenancies by the entirety are taxed as to one-half; Joint tenancies are taxed in full except to the extent that the survivor can establish he contributed to the consideration for the acquisition of the property.

14. Property held by husband and wife is not taxed; Joint tenancies are taxed in full.

15. Tenancies by the entirety are not recognized; Joint tenancies are taxed in full except to the extent that the survivor can establish he contributed to the consideration for the acquistion of the property.

16. Community property passing to surviving spouse not taxable; Tenancies by the entirety are not recognized; Joint tenancies are taxed proportionately according to the number of owners.

17. When surviving tenant is either spouse or children of decedent, one-half of the property, but not to exceed $40,000 is tax exempt. Property received by gift or inheritance by decedent and spouse as tenants by the entirety is taxed as to one-half; Property similarly received by decedent and others as joint tenants is taxed proportionately.

18. Decendent's interest in community property is taxable (even if to surviving spouse); Tenancies by the entirety are not recognized; Value of decedent's interest in joint tenancy is taxable.

19. Tenancies by the entirety are not taxed; Joint tenancies, as such, in real property have been abolished; Holding of property in more than one name with rights of survivorship is recognized under some circumstances, in which event the property is taxed in full except to the extent that the survivor can establish he contributed to the consideration for the acquisition of the property.

INTANGIBLE PERSONAL PROPERTY

All States of the United States, the District of Columbia and the Territories of Alaska and Hawaii either have laws prohibit-

ing taxation or provide for reciprocal exemption therefrom with respect to intangible personal property not having a business situs within their borders belonging to a person who died a resident of another state or territory of the United States, except:

1. Kansas taxes such intangible personal property if it is not taxed or submitted for taxation in the state of domicile of the decedent.
2. South Carolina's reciprocity does not extend to states which have no inheritance tax law.
3. The States of Arkansas, California, Florida, Iowa, Kentucky, Massachusetts, Montana, South Dakota, Texas, Utah and Washington tax such intangible personal property when owned by a non-resident of the United States.
4. California and the District of Columbia tax intangible personal property when owned by an alien, whether resident or not, of the United States.
5. Mississippi has repealed its reciprocity statute and now taxes intangible personal property of a non-resident. (House Bill 265-Regular Session 1956).
6. Colorado's reciprocity statute extends to intangible personal property having an actual or business situs within the State owned by a resident of the United States.

WAIVERS

Waivers for the transfers of stock of a domestic corporation *are* required in the following states and application therefor should be addressed as indicated:

Alabama ..... Commissioner of Revenue
State Department of Revenue
Estate Tax Division
Montgomery, Alabama

Alaska ..... Tax Commissioner
Department of Taxation
Juneau, Alaska

Arizona ..... State Tax Commission
Phoenix, Arizona

California ..... Inheritance Tax Attorney
State Controller's Office
Sacramento, California

Dist. of Columbia..... Assessor of Taxes
Inheritance & Estate Tax Div.
Municipal Building
Washington, D. C.

Hawaii ..... Tax Commissioner
Territory of Hawaii
Honolulu, Hawaii

Idaho ..... State Tax Collector
Inheritance Tax Division
Boise, Idaho

Illinois ..... Attorney General
Inheritance Tax Division
160 No. La Salle Street
Chicago, Illinois

Indiana ..... Inheritance Tax Administrator
Department of State Revenue
141 S. Meridian
Indianapolis, Indiana

Iowa ..... State Tax Commission
Inheritance Tax Division
Des Moines, Iowa

Kansas ..... Director of Revenue
State Commission of Revenue and Taxation
Topeka, Kansas

Kentucky ..... Department of Revenue
Inheritance Tax Division
Frankfort, Kentucky

Maine ..... State Tax Assessor
State House
Augusta, Maine

Massachusetts ..... Tax Commissioner
Inheritance Tax Division
18 Tremont Street
Boston, Massachusetts

Michigan	State Department of Revenue Inheritance Tax Division Lansing, Michigan
Minnesota	Commissioner of Taxation State Office Building St. Paul, Minnesota
Mississippi	State Tax Commissioner Jackson, Mississippi
Missouri	Department of Revenue Inheritance Tax Division Jefferson City, Missouri
New Mexico	Bureau of Revenue Succession Tax Division Santa Fe, New Mexico
North Carolina	Commissioner of Revenue Raleigh, North Carolina
Ohio	Department of Taxation Inheritance Tax Division Columbus, Ohio
Oklahoma	Estate Tax Division Capitol Building Oklahoma City, Oklahoma
Oregon	State Treasurer Inheritance Tax Division Salem, Oregon
Pennsylvania	Department of Revenue Inheritance Tax Division Harrisburg, Pennsylvania
South Carolina	Director Inheritance Tax Div. Tax Commission Columbia, South Carolina
South Dakota	Director of Taxation Inheritance Tax Department Pierre, South Dakota
Tennessee	Commissioner of Finance and Taxation Nashville, Tennessee

Texas	State Comptroller of Public Accounts Austin, Texas
Utah	State Tax Commission Capitol Building Salt Lake City, Utah
Washington	State Tax Commission Inheritance Tax Division Olympia, Washington
West Virginia	State Tax Commissioner Capitol Building Charleston, West Virginia
Wisconsin	Inheritance Tax Counsel Department of Taxation Madison, Wisconsin (only where stock is jointly owned)
Wyoming	Inheritance Tax Commissioner Capitol Building Cheyenne, Wyoming

Waivers ARE NOT required in the following States: Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Louisiana, Maryland, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Rhode Island, Vermont, Virginia, Wisconsin (unless the stock is jointly owned).

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WHAT IS RECOGNITION?

Recognition is a thing that grows gradually and surely through the years.

It comes as service is rendered. It is born of high business ethics, of experience, of fine craftsmanship, and it becomes an asset more valuable than worldly possessions. It is called Good Will.

For eighty-three years this kind and quality of recognition has been accorded Shepard's Citations.

And now, at the end of these years, Shepard's Citations is stronger and greater, building better and more worthily than ever before.

The ideals of the founders of this company established in 1873, are still actively and whole-heartedly the ideals of Shepard's Citations today.

There is nothing spectacular about these ideals.

They are simple, old-fashioned standards of workmanship, which have guided the hands and hearts of good craftsmen for many centuries.

To you, the user, they mean as much as they mean to us, for they have won and warranted your belief in the sound and consistent quality of Shepard service.

Shepard's Citations
Colorado Springs
Colorado

Notice of Sixth Louisiana Conference of Local Bar Associations

The sixth Louisiana Conference of local bar Associations will be held in Baton Rouge on January 17, 18 and 19, 1957. Registration will begin at 2:00 p. m., Thursday, January 17. The program of the Conference is:

Thursday, January 17

2:00 - 5:00 P.M. — Registration.

Friday, January 18

9:00 - 9:30 A.M. — Call to order.

9:30 - 10:30 A.M. — Committee on Continuing Professional Education.

10:30 - 11:20 A.M. — Section of Insurance.

11:30 - 12:15 P.M. — Section of Taxation.

12:30 - 1:45 P.M. — Committee on Public Relations — Dutch Treat Luncheon.

2:00 - 2:50 P.M. — Section of Local Bar Organizations. Address of Hon. John R. Grace, general counsel, State Bar of Texas.

3:00 - 5:00 P.M. — Junior Bar Section.

Saturday, January 19

9:00 - 9:20 A.M. — Assembly and certification of members of House of Delegates.

9:30 - 10:45 A.M. — Address of Hon. Paul Carrington (Current Developments in the Field of Law Office Management).

11:00 - 12:30 P.M. — Organization of House of Delegates.

12:30 - — Resolutions, closing.

Headquarters for the Conference will be at the Bellemont Motor Hotel on the Airline Highway.

All members of the Louisiana Bar Association are urged to attend.

NOTICE

The Tulane Program of Professional Study

In 1953 the Tulane Program of Professional Study was inaugurated to afford practicing attorneys an opportunity to continue their legal education and to receive practical assistance on matters of current interest. As part of the Program, the Tulane Law School offers lectures and forums devoted to specific problems of interest to lawyers, and makes available, at hours convenient to the members of the Bar, courses in the regular curriculum in fields of law which are relatively new, or which are developing at a comparatively rapid rate.

In accordance with a survey which was made to determine the interests of the profession, the Law School, during the past three years, has offered upper-class courses in Donations and Wills, Gift and Estate Taxation, Income Taxation, Labor Law, Oil and Gas, Oil and Gas Taxation, Trusts, and Workmen's Compensation. During the forthcoming fall semester, the Program Committee has arranged for the course in Insurance, along with courses in Donations and Wills, and Workmen's Compensation. Under the Program, members of the Bar are not expected to take examinations in the course, and because of American Bar Association regulations, will receive no university credit. The subjects are taught by the Tulane law faculty and offer an opportunity for thorough and comprehensive study.

The first forum to be offered as a part of the Professional Study Program was devoted to "Problems Arising from the Use of Pre-Trial Conferences and Discovery." This was followed by lecture series on "The 1954 Internal Revenue Code," "Real Estate," and "Law and Morals in the 20th Century." The success of the lecture series has been gratifying. Attendance ranged from one hundred to two hundred persons at each of the lectures. The Law School has also furnished quarters for a Traffic Court Conference and a Traffic Institute, and for Mr. Irving Goldstein's "Trial Technique Clinic." For the fall term, the committee of the Professional Study Program plans a series of lectures dealing with the law of Admiralty. The Committee believes that members of the Bar will find these lectures to be a significant

contribution to their training. A formal announcement of the program will be sent to members of the New Orleans Bar. Inquiries and suggestions concerning the Program are cordially invited.

The Tulane Law School wishes to acknowledge the assistance of the faculty members and practicing attorneys who have contributed to the success of the Program.

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NOTICE

You are Invited to Join the Inter-American Bar Association

At its Ninth Conference in Dallas, Texas, in April of this year, the Inter-American Bar Association changed its Constitution and By-laws to permit qualified individuals to become members of the Association. Until that historic meeting the Association, founded in 1940 by a group of distinguished Latin American and United States lawyers, judges, legislators, and statesmen, had had only organizational and institutional members. Thus, practically every national bar association in the Western Hemisphere, together with many of the local bar associations and other professional organizations having a legitimate interest in our work, had joined the Inter-American Bar Association.

After the initial organizational meeting in Havan, Cuba in 1941 subsequent meetings of the Association were held in Rio de Janeiro, Mexico City, Santiago, Lima, Detroit, Montevideo, Sao Paulo and Dallas. All of these meetings were very well attended and significant contributions were made to the advancement of the science of jurisprudence in the Western Hemisphere. Furthermore, at these conferences subjects of importance and of timely interest have recently been explored, including initial consideration of the legal problems of atomic energy and also of the legal problems regarding the economic development of the countries of the Americas.

Because of the increasingly rapid rate at which the affairs of our Hemisphere are currently being conducted, thus necessi-

tating quick communication between members of the legal profession, it has become more important than ever before for members of the legal profession in the United States and in the Latin American countries to become better acquainted and thus to establish more fruitful relationships. An awareness of the desirability of achieving these objectives led to the creation of the various categories of individual membership in the Inter-American Bar Association.

There are four classes of individual memberships:

Juniors (five years of practice or less); Seniors (more than five years of practice); Associate (Similar to Senior membership requirements) and Life membership. Annual dues are: Juniors $5.00; Seniors $10.00; Associates $25.00. Life membership is conferred upon those who have made a one time contribution of $500.00 or more.

Joining the Inter-American Bar Association as an individual member will certainly bring many benefits to you. If you would like to join our increasingly strong organization, write to William Roy Vallance, Esquire, Secretary General of the Inter-American Bar Association, 1129 Vermont Avenue, Washington 5, D. C.

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NOTICE

The Judge Advocate General of the U. S. Air Force has announced that there are openings for company grade officers in the Air Force, Judge Advocate General Department and that the Air Force is anxious to fill such openings through recall of competent reserve lawyers or by direct commissions.

Maximum ages for first lieutenants and captains are 34 and 40 respectively; experience requirements 3-7 and 7-14 years respectively with law school counting as 3 years' experience.

Further information may be obtained from the Staff Judge Advocate, Headquarters, Fourteenth Air Force, Robins Air Force Base, Georgia.

A DECISION LEGALLY SIGNIFICANT TO ALL GAME WARDENS

The following is the full content of a ruling on the merits rendered by the Honorable Ben C. Dawkins, Jr., United States District Judge in the case of *United States of America v. Alvin Dowden*:

A tiny tempest in a tinier teapot has brought forth here all the ponderous powers of the Federal Government, mounted on a Clydesdale in hot pursuit of a private citizen who shot a full-grown deer in a National Forest.

Not content with embarrassing defendant by this prosecution, and putting him to the not inconsiderable expense of employing counsel, the Government has compounded calumny by calling the poor dead creature a "fawn". Otherwise fully equipped with all the accouterments of virile masculinity, the deceased, alas, was a "muley". Unlike other young bucks, who could proudly preen their points in the forest glades or the open meadows, this poor fellow was foredoomed to hide his head in shame: by some queer quirk of Nature's caprice, he had no horns, only "nubbins", less than an inch in length.

Instead of giving him a quiet, private interment and a "requiescat in pace", which decency should have dictated as his due, the Government has filed his blushing head in evidence for all to see. Pointing to the lack of points, to prove its point, it now insists that whatever his status may have been in other climes, in Louisiana our departed friend is officially puerile.

All this — requiring the services of five game agents, two biologists, the opposing attorneys, the United States Marshal and three Deputies, the Clerk, Court Reporter, and a Federal Judge who is a little tired of such matters — stems at least partly from the failure of the Louisiana Legislature to reckon wisely with the exceptional or unusual.

Prosecution proceeds upon 18 U.S.C. § 13 which provides:

> "Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or Dis-

trict in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

The Louisiana Revised Statutes, Title 56:124 (1), stipulate, in pertinent part:

"No person shall:

"(1) Take any fawn (*a deer with horns less than three inches long*) or any doe (a female wild deer), at any time; or a wild deer at any time when driven to the high lands by overflow or high water." (Emphasis supplied.)

Evidently relying on some uncanny prescience instead of his eyesight for his judgment of the deer, or perhaps having trusted to luck — which was with him — or a proper profile view, defendant slew the animal at some forty paces in the Kisatchie National Forest on December 10th, 1953. Soon the law had him in its clutches, but because the authorities obviously were unsure of their ground, formal charges were not filed here until February 24th, 1955. Meanwhile, a State Grand Jury, having jurisdiction over the heinous offense, had refused to indict. Trial in this Court has been delayed until now by slightly weightier matters and by several continuances engendered by fruitless efforts of counsel to stipulate the facts.

Finally and inexorably, jury trial having been formally waived and that expense at least avoided, Nimrod's case has been heard and he is found *not* wanting:

1. The object of our inspection was not less than sixteen months, nor more than eighteen months, old. His teeth told the tale.

2. He was no doe, or pseudo-doe. *All* witnesses agree on this.

3. Except for his unfortunate looks, which he couldn't help, he was "all man". He could have and may have become the father of a fawn.

4. He weighed some 90 to 100 pounds on his cloven hooves, and 57 pounds dressed, or rather, undressed. Deer on Government lands apparently aren't as well nourished, and don't grow as large, as elsewhere.

5. Biologically he was a buck, not a fawn, who in

strictly female company would have had to bow to no critic. His handicap actually was one only upon having to fight for the affections of the distaff side. What he lacked in weapons, he could have made up for in celerity, dexterity or finesse.

In all *important* respects, therefore, notwithstanding the Louisiana Legislature, which may be forgiven for its ignorance, Buck has been grossly slandered. He never should have been dubbed arbitrarily as a "fawn". He was no baby and was not even a sissy.

It necessarily follows that if Buck is not guilty, neither is Alvin, who is ACQUITTED and DISCHARGED *sine die*.

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